

109TH CONGRESS
1ST SESSION

H. R. 1712

To expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary.

IN THE HOUSE OF REPRESENTATIVES

APRIL 19, 2005

Ms. WOOLSEY (for herself, Mr. BACA, Mr. BECERRA, Mr. BERMAN, Mrs. CAPPS, Mr. CARDOZA, Mr. COSTA, Mrs. DAVIS of California, Ms. ESHOO, Mr. FARR, Mr. FILNER, Ms. HARMAN, Mr. HONDA, Mr. LANTOS, Ms. LEE, Ms. ZOE LOFGREN of California, Ms. MILLENDER-McDONALD, Mr. GEORGE MILLER of California, Mrs. NAPOLITANO, Ms. ROYBAL-ALLARD, Ms. PELOSI, Ms. LINDA T. SÁNCHEZ of California, Ms. LORETTA SANCHEZ of California, Mr. SCHIFF, Mr. SHERMAN, Ms. SOLIS, Mr. STARK, Mrs. TAUSCHER, Mr. THOMPSON of California, Ms. WATERS, Ms. WATSON, Mr. WAXMAN, and Ms. MATSUI) introduced the following bill; which was referred to the Committee on Resources

A BILL

To expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Gulf of the Farallones
5 and Cordell Bank National Marine Sanctuaries Boundary
6 Modification and Protection Act”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The Gulf of the Farallones extends approxi-
4 mately 100 miles along the coast of Marin and
5 Sonoma counties of northern California. It includes
6 approximately one-half of California's nesting
7 seabirds, rich benthic marine life on hard-rock sub-
8 strate, prolific fisheries, and substantial concentra-
9 tions of resident and seasonally migratory marine
10 mammals.

11 (2) Cordell Bank is adjacent to the Gulf of the
12 Farallones and is a submerged island with spectac-
13 ular, unique, and nationally significant marine envi-
14 ronments.

15 (3) These marine environments have national
16 and international significance, exceed the biological
17 productivity of tropical rain forests, and support
18 high levels of biological diversity.

19 (4) These biological communities are easily sus-
20 ceptible to damage from human activities, and must
21 be properly conserved for themselves and to protect
22 the economic viability of their contribution to na-
23 tional and regional economies.

24 (5) The Gulf of Farallones and Cordell Bank
25 include some of the Nation's richest fishing grounds,
26 supporting important commercial and recreational

1 fisheries. These fisheries are regulated by State and
2 Federal fishery agencies and are supported and fos-
3 tered through protection of the waters and habitats
4 of Gulf of the Farallones National Marine Sanctuary
5 and Cordell Bank National Marine Sanctuary.

6 (6) The report of the Commission on Ocean
7 Policy established by Public Law 106–256 calls for
8 comprehensive protection for the most productive
9 ocean environments and recommends that they be
10 managed as ecosystems.

11 (7) New scientific discoveries by the National
12 Marine Sanctuary Program support comprehensive
13 protection for these marine environments by broad-
14 ening the geographic scope of the existing Gulf of
15 the Farallones National Marine Sanctuary and the
16 Cordell Bank National Marine Sanctuary.

17 (8) Cordell Bank is at the nexus of an ocean
18 upwelling system, which produces the highest bio-
19 mass concentrations on the west coast of the United
20 States.

21 **SEC. 3. POLICY AND PURPOSE.**

22 (a) **POLICY.**—It is the policy of the United States in
23 this Act to protect and preserve living and other resources
24 of the Gulf of the Farallones and Cordell Bank marine
25 environments.

1 (b) PURPOSE.—The purposes of this Act are the fol-
2 lowing:

3 (1) To extend the boundaries of the Gulf of the
4 Farallones National Marine Sanctuary and the
5 Cordell Bank National Marine Sanctuary to the
6 areas described in section 5.

7 (2) To strengthen the protections that apply in
8 the Sanctuaries.

9 (3) To educate and interpret for the public re-
10 garding those marine environments.

11 (4) To manage human uses of the Sanctuaries
12 under this Act and the National Marine Sanctuaries
13 Act (16 U.S.C. 1431 et seq.).

14 (c) EFFECT ON FISHING ACTIVITIES.—Nothing in
15 this Act is intended to alter any existing authorities re-
16 garding the conduct of fishing activities in the Sanc-
17 tuaries.

18 **SEC. 4. DEFINITIONS.**

19 In this Act:

20 (1) AQUACULTURE.—The term “aquaculture”
21 means the propagation or rearing of aquatic orga-
22 nisms in controlled or selected aquatic environments
23 for any commercial, recreational, or public purpose.

1 (2) CORDELL BANK NMS.—The term “Cordell
2 Bank NMS” means the Cordell Bank National Ma-
3 rine Sanctuary.

4 (3) FARALLONES NMS.—The term “Farallones
5 NMS” means the Gulf of the Farallones National
6 Marine Sanctuary.

7 (4) SANCTUARIES.—The term “Sanctuaries”
8 means the Gulf of the Farallones National Marine
9 Sanctuary and the Cordell Bank National Marine
10 Sanctuary, as expanded by section 5.

11 (5) SECRETARY.—The term “Secretary” means
12 the Secretary of Commerce.

13 (6) MEAN HIGHER HIGH WATER MARK.—The
14 term “Mean Higher High Water Mark” means the
15 arithmetic average of the elevations of the higher of
16 two high waters of a tidal day over a period of time
17 as determined by the National Oceanic and Atmos-
18 pheric Administration.

19 (7) PERSON.—The term “Person” means any
20 private or public individual, corporation, partnership,
21 trust, institution, association, or any other public or
22 private entity, whether foreign or domestic, or any
23 officer, employee, agent, department, agency, or in-
24 strumentality of the Federal Government, of any

1 State, tribal or local unit of government, or of any
2 foreign government.

3 **SEC. 5. NATIONAL MARINE SANCTUARY BOUNDARY AD-**
4 **JUSTMENTS.**

5 (a) GULF OF THE FARALLONES.—

6 (1) BOUNDARY ADJUSTMENT.—The areas de-
7 scribed in paragraph (2) are added to the existing
8 Gulf of the Farallones National Marine Sanctuary
9 described in part 922.80 of title 15, Code of Federal
10 Regulations.

11 (2) AREAS INCLUDED.—

12 (A) IN GENERAL.—The areas referred to
13 in paragraph (1) consist of the following:

14 (i) All submerged lands and waters,
15 including living marine and other resources
16 within and on those lands and waters,
17 from the mean higher high water mark to
18 the boundary described in subparagraph
19 (B).

20 (ii) The submerged lands and waters,
21 including living marine and other resources
22 within those waters, within the approxi-
23 mately two square nautical mile portion of
24 Cordell Bank NMS (as in effect imme-
25 diately before the enactment of this Act)

1 that is located south of the area that is
2 added to Cordell Bank NMS by subsection
3 (b)(2), which are transferred to the
4 Farallones NMS from the Cordell Bank
5 NMS.

6 (B) BOUNDARY DESCRIBED.—The bound-
7 ary referred to in subparagraph (A)(i) is the
8 line formed by connecting points in succession
9 beginning at Bodega Head' Southernmost Point
10 located at 38 degrees, 18 minutes north lati-
11 tude, 123 degrees, 6.5 minutes west longitude;
12 then in a northwesterly direction along the coast
13 to the mouth of the Gualala River at 38 de-
14 grees, 45 minutes north latitude, 123 degrees,
15 31.9 minutes west longitude; then west 21.7
16 nautical miles to 38 degrees, 45 minutes north
17 latitude, 124 degrees west longitude; then due
18 south 27 nautical miles to 38 degrees, 18 min-
19 utes north latitude, 124 degrees west longitude;
20 then 37.7 nautical miles east to 38 degrees, 18
21 minutes north latitude, 123 degrees, 12 minutes
22 west longitude; then to the shared boundary of
23 the Farallones NMS and Cordell Bank NMS
24 (as in effect immediately before the enactment
25 of this Act) at 38 degrees, 15.9 minutes north

1 latitude, 123 degrees, 10.9 minutes west lon-
2 gitude.

3 (b) CORDELL BANK.—

4 (1) BOUNDARY ADJUSTMENT.—The area de-
5 scribed in paragraph (2) is added to the existing
6 Cordell Bank National Marine Sanctuary described
7 in part 922.80 of title 15, Code of Federal Regula-
8 tions.

9 (2) AREA INCLUDED.—

10 (A) IN GENERAL.—The area referred to in
11 paragraph (1) consists of all submerged lands
12 and waters, including living marine and other
13 resources within those waters, within the
14 boundary described in subparagraph (B).

15 (B) BOUNDARY.—The boundary referred
16 to in subparagraph (B) is the line formed by
17 connecting points in succession beginning at the
18 present most northeastern point of the Cordell
19 Bank NMS at 38 degrees, 15.9 minutes north
20 latitude, 123 degrees, 10.9 minutes west lon-
21 gitude; then to 38 degrees, 18 minutes north
22 latitude, 123 degrees, 12 minutes west lon-
23 gitude, which is 7 miles west of Bodega Head;
24 then to 38 degrees, 18 minutes north latitude,
25 123 degrees, 40 minutes west longitude, which

1 is 28.6 nautical miles west of Bodega Head;
2 then due south 32 nautical miles to 37 degrees,
3 50 minutes north latitude, 123 degrees, 40 min-
4 utes west longitude; then 11.5 nautical miles
5 east where it intersects with a boundary shared
6 by Cordell Bank NMS and Farallones NMS at
7 37 degrees, 50 minutes north latitude, 123 de-
8 grees, 25.4 minutes west longitude.

9 (c) INCLUSION IN THE SYSTEM.—The areas included
10 in the Sanctuaries under subsections (a) and (b) of this
11 section shall be managed as part of the National Marine
12 Sanctuary System, established by section 301(c) of the
13 National Marine Sanctuaries Act (16 U.S.C. 1431(c)), in
14 accordance with that Act.

15 (d) UPDATED NOAA CHARTS.—The Secretary of
16 Commerce shall—

17 (1) produce updated National Oceanic and At-
18 mospheric Administration charts for the areas in
19 which are located the Farallones NMS and Cordell
20 Bank NMS; and

21 (2) include on those charts the boundaries of
22 such national marine sanctuaries, as revised by this
23 Act.

1 **SEC. 6. PROHIBITION OF CERTAIN USES.**

2 (a) MINERAL AND HYDROCARBON LEASING, EXPLO-
3 RATION, DEVELOPMENT, AND PRODUCTION.—No leasing,
4 exploration, development, production, or transporting by
5 pipeline of minerals or hydrocarbons shall be permitted
6 within the Sanctuaries.

7 (b) AQUACULTURE.—

8 (1) PROHIBITION.—It is unlawful for any per-
9 son to conduct aquaculture—

10 (A) in any area of the Sanctuaries; or

11 (B) within Monterey Bay National Marine
12 Sanctuary.

13 (2) EXISTING BIVALVE FARMING ALLOWED.—

14 The prohibition in paragraph (1) shall not apply to
15 persons conducting farming operations of bivalve
16 species that are in existence on the date of enact-
17 ment of this Act.

18 (3) REGULATIONS.—The Secretary shall issue
19 regulations that specify the operations referred to in
20 paragraph (2).

21 (c) DISCHARGE OF MATERIALS AND SUBSTANCES.—

22 (1) PROHIBITIONS.—It is unlawful for any per-
23 son—

24 (A) to deposit or discharge any material or
25 substance of any kind within the Sanctuaries;

1 (B) to deposit or discharge any material or
2 substance of any kind that enters and injures
3 any sanctuary resource (as that term is defined
4 in the National Marine Sanctuaries Act); or

5 (C) to deposit or discharge any invasive
6 species from a vessel in the Sanctuaries.

7 (2) CHANGES IN SALINITY.—No person shall
8 cause a change of salinity in the Sanctuaries that is
9 injurious to the marine ecosystem of the Sanc-
10 tuaries.

11 (3) LIMITATION ON APPLICABILITY.—Para-
12 graph (1) does not apply with respect to any dis-
13 charge—

14 (A) of fish, fish parts, and chumming ma-
15 terials resulting from, and while conducting
16 otherwise lawful, fishing activity;

17 (B) of food consumed onboard a vessel;

18 (C) of biodegradable effluents incidental to
19 vessel use and generated by an operable Type
20 I or II marine sanitation device as classified by
21 the United States Coast Guard, that is ap-
22 proved in accordance with section 312 of the
23 Federal Water Pollution Control Act (33 U.S.C.
24 1322) provided the vessel operator secures all
25 marine sanitation devices in a manner that pre-

1 vents discharge of untreated sewage from a
2 Type I or Type II Coast Guard-approved sani-
3 tation devices, except that this subparagraph
4 does not apply with respect to a discharge from
5 a cruise ship within the boundaries of either
6 sanctuary;

7 (D) of biodegradable material resulting
8 from deck wash down and vessel engine cooling
9 water (excluding ballast water and oily wastes
10 from bilge pumping), from a vessel;

11 (E) from vessel engine exhaust; or

12 (F) that—

13 (i) originates in the Russian River
14 Watershed outside the boundaries of the
15 Gulf of the Farallones National Marine
16 Sanctuary;

17 (ii) originates from the Bodega Ma-
18 rine Laboratory; and

19 (iii) is permitted under a National
20 Pollution Discharge Elimination System
21 permit that is in effect on the date of en-
22 actment of this Act, or under a new or re-
23 newed National Pollution Discharge Elim-
24 ination System permit that does not in-
25 crease pollution in the Sanctuaries.

1 (d) CONSULTATION REQUIREMENT FOR CHANGES IN
2 WATER FLOW.—Any Federal, State or local government
3 agency that is responsible for significant alteration of
4 fresh water flow regimes that may affect the Sanctuaries
5 must consult with the Secretary prior to initiating such
6 change in order to ensure sanctuary resources are not in-
7 jured.

8 (e) PENALTIES AND ENFORCEMENT.—A violation of
9 this section shall be treated as a violation of section 306
10 of the Marine Protection, Research, and Sanctuaries Act
11 of 1972 (16 U.S.C. 1436).

12 **SEC. 7. MANAGEMENT PLANS AND REGULATIONS.**

13 (a) INTERIM PLAN.—The Secretary shall complete an
14 interim supplemental management plan for each of the
15 Sanctuaries by not later than 30 months after the date
16 of enactment of this Act, that focuses on management in
17 the areas added under this Act. These supplemental plans
18 shall not weaken existing resource protections.

19 (b) REVISED PLANS.—The Secretary shall issue a re-
20 vised comprehensive management plan for each of the
21 Sanctuaries during the next management review process
22 required by section 304 of the National Marine Sanc-
23 tuaries Act (16 U.S.C. 1434(e)) for the Sanctuaries, and
24 issue such final regulations as may be necessary.

1 (c) APPLICATION OF EXISTING REGULATIONS.—The
2 regulations for the Gulf of the Farallones National Marine
3 Sanctuary (15 C.F.R. 922, subpart H) and the Cordell
4 Bank National Marine Sanctuary (15 C.F.R. 922, subpart
5 K) shall apply to the areas added to the Sanctuaries under
6 section 5 until the Secretary modifies such regulations in
7 accordance with this section.

8 (d) PROCEDURES.—In developing the revisions under
9 this section, the Secretary shall follow the procedures spec-
10 ified in sections 303 and 304 of the Marine Protection,
11 Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433
12 and 1434), except those procedures requiring the delineation
13 of national marine sanctuary boundaries and develop-
14 ment of a resource assessment report.

15 (e) CONTENTS OF PLANS.—Revisions to each com-
16 prehensive management plan under this section shall, in
17 addition to matters required under section 304(a)(2) of
18 the Marine Protection, Research and Sanctuaries Act of
19 1972 (16 U.S.C. 1434(A)(2))—

- 20 (1) facilitate all public and private uses of each
21 of the Sanctuaries consistent with the primary objec-
22 tive of sanctuary resource protection;
- 23 (2) establish temporal and geographical zoning
24 if necessary to ensure protection of sanctuary re-
25 sources;

1 (3) identify priority needs for research which
2 will—

3 (A) improve management of each of the
4 Sanctuaries;

5 (B) diminish threats to the health of the
6 ecosystems in the Sanctuaries; or

7 (C) fulfill both of subparagraphs (A) and
8 (B);

9 (4) establish a long-term ecological monitoring
10 program and database, including the development
11 and implementation of a resource information sys-
12 tem to disseminate information on the Sanctuaries'
13 ecosystem, history, culture and management;

14 (5) identify alternative sources of funding need-
15 ed to fully implement the plan's provisions and sup-
16 plement appropriations under section 313 of the Ma-
17 rine Protection, Research, and Sanctuaries Act of
18 1972 (16 U.S.C. 1444);

19 (6) ensure coordination and cooperation be-
20 tween Sanctuary managers and other Federal, State,
21 and local authorities with jurisdiction within or adja-
22 cent to the Sanctuaries;

23 (7) in the case of revisions to the plan for the
24 Farallones NMS, promote cooperation with farmers
25 and ranchers operating in the watersheds adjacent

1 to the Gulf of the Farallones NMS and establish vol-
2 untary best practices programs for farming and
3 ranching;

4 (8) promote cooperative and educational pro-
5 grams with fishing vessel operators and crews oper-
6 ating in the waters of the Sanctuaries, and, when-
7 ever possible, include individuals who engage in fish-
8 ing and their vessels in cooperative research, assess-
9 ment, and monitoring programs of the education,
10 among users of the Sanctuaries, about conservation
11 and navigational safety and the conservation of
12 those resources; and

13 (9) promote education, among users of the
14 Sanctuaries, about conservation and navigation safe-
15 ty.

16 (f) PUBLIC PARTICIPATION.—The Secretary shall
17 provide for participation by the general public in the revi-
18 sion of the comprehensive management plans and regula-
19 tions under this section.

20 **SEC. 8. FEASIBILITY OF A NEW SANCTUARY DESIGNATION.**

21 (a) REVIEW AND RECOMMENDATION.—As part of the
22 first review, following the date of enactment of this Act,
23 of the Gulf of the Farallones National Marine Sanctuary
24 Management Plan pursuant to section 304(e) of the Na-

1 tional Marine Sanctuaries Act (16 U.S.C. 1434(e)), the
2 Secretary shall—

3 (1) conduct a review of the operations of the
4 Farallones NMS; and

5 (2) following not less than one public hearing
6 held in the area added to the Farallones NMS by
7 this Act and the receipt of public comment, deter-
8 mine whether that area shall be designated as a new
9 and separate National Marine Sanctuary.

10 (b) CONSIDERATIONS FOR DETERMINATION.—In
11 making the determination under subsection (a)(2), the
12 Secretary shall consider responsiveness to local needs, the
13 effectiveness of conservation, education and volunteer pro-
14 grams, and organizational efficiency.

15 (c) IMPLEMENTATION OF DETERMINATION.—If the
16 Secretary determines under subsection (b) to designate a
17 new national marine sanctuary, the Secretary shall imple-
18 ment measures to assure a smooth and effective transition
19 to a separate national marine sanctuary.

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